



Open Repository Service

General Terms and Conditions

Atmire NV
Gaston Geenslaan 14
Leuven 3001
Belgium

1. Term

These Terms and Conditions apply as of the Effective Date, defined in the countersigned Service Specification. It will then continue for the Term unless and until terminated in accordance with these terms and conditions.

2. Open Repository (OR) Service

- 2.1. ATMIRE shall configure, and deliver the on-line service that allows the delivery and access over the Internet of the Content as described in the Specification (the "OR Service").
- 2.2. Once the OR Service has been configured in accordance with this agreement, ATMIRE will then provide the OR Service in accordance with this agreement for the remainder of the term of this agreement.

3. Warranties

- 3.1. Subject to clause 3.2, ATMIRE warrants:
 - 3.1.1. that it will provide initial setup, hosting and maintenance of the OR Service;
 - 3.1.2. that Services will be supplied by ATMIRE with reasonable care and skill and by appropriately qualified personnel.
- 3.2. ATMIRE shall not be liable for any breach of clause 3.1 that results from:
 - 3.2.1. Any failure by the Client to comply with its obligations or to carry out its responsibilities under this agreement;
 - 3.2.2. any defect in any equipment, software, facilities or services owned, provided or obtained by the Client (other than the OR Service); and
- 3.3. To the maximum extent permissible under applicable law, ATMIRE , on behalf of itself and its suppliers, expressly disclaims all warranties other than those set out in this agreement, either express or implied, including but not limited to warranties of merchantability, satisfactory quality and fitness for a particular purpose.
- 3.4. The Client warrants that (a) it has and will continue to have all necessary rights, licenses and consents to load the Content into the OR Service and to permit Users to access and use the Content using the OR Service, (b) the Content does not infringe any third party intellectual property rights, is not in breach of confidence, unlawful, offensive, abusive, indecent, obscene or defamatory.
- 3.5. The Client indemnifies ATMIRE and shall keep ATMIRE indemnified from and against any and all direct losses, costs, claims and expenses arising as a result of the breach of the warranties contained in clause 3.4.

4. Data Protection

4.1. Each party will ensure that all personal data provided or disclosed by the other party

4.1.1. is kept confidential and reasonably secure; and

4.1.2. is not disclosed to any unauthorized third parties except through order of a court or tribunal.

The party to whom such personal data is provided or disclosed will comply with all reasonable instructions from the providing or disclosing party relating to the security and confidentiality of the personal data;

4.2. A party to whom personal data is provided or disclosed by the other party:

4.2.1. will only process that personal data in accordance with the instructions of that other party or the instructions of the data subject or by reason of an order of a court or tribunal; and

4.2.2. will not do anything with any of the personal data (including processing it) other than in accordance with instructions given by the other party or the instructions of the data subject or by reason of an order of a court or tribunal;

4.3. Each party:

4.3.1. will obtain and maintain all necessary registrations (if any) and consents under EU GDPR¹ in order to allow that party to perform its obligations under this agreement;

4.3.2. will process personal data in accordance with EU GDPR; and

4.3.3. will use reasonable efforts to make sure that no act or omission by it, its employees, contractors or agents results in a breach of the obligations of either party under applicable EU GDPR.

4.4. The Client shall load the Content into the Service in a format acceptable to ATMIRE and in accordance with the procedures notified by ATMIRE to the Client from time to time.

5. Intellectual property rights and use of the OR Service

5.1. All Intellectual Property Rights in:

5.1.1. the software used by ATMIRE to provide the OR Service (“the Software”); and

5.1.2. the user manuals (if any) provided by ATMIRE to assist in the use or operation of the OR Service (“the Manuals”) shall belong to ATMIRE or its licensors.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0679>

- 5.2. While this agreement remains in force and subject to the terms of this agreement the Client shall have a non-exclusive licence to use the Software and the Manuals for the purpose of accessing and using (and allowing its authorized users to access and use) the OR Service for the purpose of providing or obtaining the Material. The Client must not use (or allow anyone else to use) the Software or the Manuals for any other purpose.
- 5.3. All Intellectual Property Rights in the Content shall belong to the Client or its licensors. While this agreement remains in force and subject to the terms of this agreement ATMIRE shall have a non-exclusive license to use:
 - 5.3.1. the Client name on the repository site;
 - 5.3.2. the trademarks or trade names of the Client (“Client Trade Marks”) on the repository site; and
 - 5.3.3. the Content on or as part of the OR Service. All goodwill resulting from any use of the Client’s name or the Client Trade Marks by ATMIRE shall belong to the Client.
- 5.4. Use of the OR Service (and of the Software and Manuals) is subject to the following restrictions:
 - 5.4.1. only those persons authorized to use the OR Service by the Client (“Admin Users”) may use it; and
 - 5.4.2. Nothing may be posted on the OR Service that is or may be (or may become):
 - i. An infringement of a third party's intellectual property rights;
 - ii. in breach of confidence;
 - iii. unlawful;
 - iv. offensive, abusive, indecent, obscene or defamatory; or
 - v. inaccurate, unfair or misleading.
- 5.5. The Client will in relation to each Admin User before allowing the Admin User to access or use the OR Service, ensure by the inclusion of suitable terms and conditions that the Admin User agrees (a) to comply with all of the restrictions on use of the OR Service, Software and Manuals set out in this agreement, and (b) that such Admin User's personal data may be used as contemplated by this Agreement.
- 5.6. The Client will at the request of ATMIRE terminate the right to use the OR Service by any Admin User who has breached the terms of this agreement in relation to use of the OR Service or the terms of any contract with the Admin User as described in this clause.
- 5.7. ATMIRE may remove any Content from the OR Service that is in ATMIRE ’s opinion in breach of Clause 5.4.2 above.

6. Payment

- 6.1. ATMIRE shall be entitled to charge for:

- 6.1.1. the configuration and provision of the OR Service in accordance with the provisions of the Specification; and
- 6.1.2. provision of other services under this agreement at its then prevailing charging rates.
- 6.2. All amounts referred to in this agreement are expressed exclusive of Value Added Tax ("VAT"). If VAT or any other sales tax is payable on any such amounts, then the Client will (on presentation of an appropriate VAT or sales tax invoice) pay the VAT or sales tax in addition to the amounts concerned.
- 6.3. If the Client is required by law to deduct any withholding taxes then it may do so provided that:
 - 6.3.1. it notifies ATMIRE of this fact and gives details of all amounts so deducted;
 - 6.3.2. it accounts for all such sums to the relevant authorities; and
 - 6.3.3. it provides ATMIRE with all such documentation and assistance as may be reasonably required by ATMIRE in order to enable ATMIRE to reclaim or to obtain a tax credit for any such amounts.
- 6.4. ATMIRE may invoice the Client for all amounts as they become due under this agreement. Invoices must be paid within 30 days of the date of receipt of such invoice.
- 6.5. ATMIRE may charge interest on all sums outstanding beyond the date on which they are due for payment under this agreement. Interest may be charged on that basis from the date payment was due until the date of payment (including after any judgement has been obtained) at the rate of 2% per year above the EURIBOR 3 month rate.

7. Termination

- 7.1. Either party may terminate this agreement in the event that the other is in material breach of the agreement and has failed to remedy the breach within 28 days of being given notice asking for it to be remedied. This clause 7.1 does not apply to breaches consisting of interruption to the provision by ATMIRE of the OR Service (covered by clause 7.2) or non-payment of charges by the Client (covered by clause 7.3).
- 7.2. The Client may terminate this agreement in the event that the OR Service is unavailable for a continuous period of 7 days following the configuration of the OR Service.
- 7.3. ATMIRE may terminate this agreement in the event that the Client is in breach of its obligations to pay any amounts properly due and payable under this agreement and has failed to remedy such breach within 20 days of being given notice asking for the breach to be remedied; or
- 7.4. Either party may terminate this agreement with immediate effect in the event that:
 - 7.4.1. an administration order is made in respect of the other party or an order is made or an effective resolution is passed for the liquidation or winding up

(or any similar judicial process) of the other party (except for the purpose of amalgamation or reconstruction);

- 7.4.2. the other party enters into any composition or arrangement for the benefit of its creditors or:
 - 7.4.3. an encumbrancer takes possession of; or
 - 7.4.4. an administrative receiver or a receiver or manager is appointed in relation to;
 - 7.4.5. all or any part of its assets or undertakings or if it takes or suffers any similar action in consequence of debt or a judgement is entered against it and is not paid within 21 days; or
 - 7.4.6. the other party ceases to carry on its business or substantially the whole of its business or disposes of its undertaking or stops payment of its debts as and when they fall due or is treated as being unable to pay its debts as they fall due
- 7.5. If the Client is in breach of its obligations to pay any amounts properly due and payable under this agreement and has failed to remedy such breach within 20 days of being given notice asking for the breach to be remedied then ATMIRE shall be entitled to suspend the Services at any time until such payment obligations are satisfied, and any dates or time periods relevant to performance under this agreement shall be appropriately extended to account for delays resulting from such suspension.
- 7.6. ATMIRE reserves the right to terminate this agreement upon 180 days advance written notice.
- 7.7. Optional Export services
Upon termination of the contract, ATMIRE can provide the Client with optional services to export and migrate the hosted content, in case the standard export tools in the system's user interface do not meet the Client's export needs. The provision of this type of services is not included in the scope or the cost of this subscriber agreement. The cost for such services will depend on the size of the hosted content, as well as the preferred export format or migration practices from the Client.
- 7.8. Renewal
Unless terminated as provided herein, this Agreement will extend for the duration of the defined contract term from the date of signature hereof by both Parties and will automatically renew from contract term to contract term thereafter. THE CLIENT can terminate the agreement with a written notice that needs to be acknowledged by Atmire at least 30 days before the start of the next contract term.

8. Consequences of termination

On termination of this agreement for any reason:

- 8.1. The Client must stop using the OR Service (and the Software and Manuals);

- 8.2. ATMIRE shall remove any reference to the Client or to any trade marks belonging to the Client from the OR Service;

9. Variations

Variations to this agreement must be in writing and signed by each party in order to be effective.

10. Limitation of liability

- 10.1. ATMIRE's liability:

- 10.1.1. for death or personal injury caused by its negligence or the negligence of its employees or agents;
- 10.1.2. for breach of any condition as to title or quiet enjoyment implied by statute;
- 10.1.3. for fraudulent misrepresentation;

is not excluded or limited by this agreement, even if any other term of this agreement would otherwise suggest that this might not be the case.

- 10.2. Subject to clause 10.1, neither party accepts any liability under or in relation to this agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any loss of profits, loss of sales or business, loss of reputation, loss of goodwill, indirect, special or consequential loss or damage and for the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

- 10.3. Subject to clauses 10.1 and 10.2, ATMIRE's total liability arising from or in connection with this agreement and in relation to anything which it has done or not done in connection with this agreement (and whether the liability arises because of breach of contract, negligence or for any other reason) shall be limited to:

- 10.3.1. in the aggregate, an amount equal to the charges paid or payable by the Client under this agreement in relation to the calendar year in which the event (or, if more than one, the first event) occurred;

- 10.4. No conditions, warranties or other terms apply to any supplies under this agreement except to the extent that they are expressly set out in this agreement. Subject to clause 10.1, no implied conditions, warranties or other terms apply (including any implied terms as to satisfactory quality, fitness for purpose or conformance with description).

11. Notices

Any notice required under this Agreement shall be given in writing and delivered personally or by fax, prepaid registered or certified mail (return receipt requested), or overnight delivery service to the parties at their addresses as set out in the Schedule or such other address as shall have been designated to each other in writing in accordance with this clause 17. Any notice so given shall be deemed served on delivery if delivered personally, at the time of transmission if sent by fax, five days after posting if sent by

prepaid registered or certified mail and two days after dispatch if sent by overnight delivery service.

12. Delay and circumstances outside the parties' reasonable control

Neither party shall be under any liability whatsoever for non-performance, part performance, defective performance, or delay in performance of any obligation hereunder that is directly or indirectly caused by, or as a result of, any act of God; outbreak of hostilities (whether or not war is declared); insurrection; riot; civil disturbance; act of terrorism; action or regulations of any government or regulatory authority; fire; fog or bad weather; flood; accident; power failure; theft, strike, lock out; or trade dispute, whether affecting such party, its suppliers or subcontractors; or caused by any other event or circumstance whatsoever, beyond the reasonable control of the party affected. A party subject to a force majeure event shall exercise its best efforts to minimize and mitigate the length of the delay or interruption in service.

13. Waiver of remedies

Any waiver (express or implied) by either party of any default or breach of the Agreement by the other shall not constitute a waiver of any other or subsequent default or breach.

14. Assignment

Neither party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party save that ATMIRE shall be entitled to assign its rights and obligations hereunder to its ultimate holding company or a subsidiary of its ultimate holding company or an acquirer (part of) its business.

15. Prior agreements

This Agreement, together with any and all exhibits, schedules and appendices attached hereto, constitutes the entire agreement between the parties and supersedes all prior oral or written representations, agreements, promises, or other communications, which pertain to the covered subject matter. This Agreement may not be amended or modified except by written agreement signed by authorized representatives of each party.

16. Severability

If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

17. Governing law

Unless otherwise agreed in the Service Specification, the parties agree that this Agreement will be governed by and construed and interpreted in accordance with the laws of Belgium. All documentary submissions, presentations, and proceedings shall be in the English language.

In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by CEPANI² under the CEPANI Rules of Arbitration by one arbitrators appointed in accordance with those Rules. The seat of the arbitration shall be Brussels, Belgium.

² <http://www.cepani.be>